In the Supreme Court of the United States

October Term, 1979

No. 79-349

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States Court of Appeals for the Eighth Circuit on the following grounds:

1. The judgment of the Court of Appeals is clearly correct under the holding of this Court in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), which is controlling here.

(a) Application of the Minnesota Pension Act[1] to White[2] would nullify express terms of pension agreements between White and the UAW[3] limiting White's liability for pension payments and superimpose retroactive obligations upon the Company substantially beyond the terms of its contracts with the UAW—thereby severely impairing contractual relationships.

(b) The State's[4] claim that there is no impairment of contract here by reason of employee beliefs contrary to express terms of White's collective bargaining agreements with the UAW is in conflict with fundamental principles of federal labor law applied by this Court in numerous cases, including *Ford Motor Company v. Huffman*, 345 U.S. 330, 338-339 (1953); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967); and *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50, 63 (1975).

(c) In *Allied*, this Court found that the identical statute, the Minnesota Pension Act, "simply does not possess the attributes of those state laws that in the past have survived challenge under the Contract Clause of the Constitution." 438 U.S., at 250. The State's attempt to reargue on this appeal the purpose, necessity and reasonableness of the

1. The Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974), is referred to herein as the "Minnesota Pension Act." The Act is set forth in the appendix to the State's jurisdictional statement.

2. Appellees White Motor and White Farm, its subsidiary, are collectively referred to herein as "White."

3. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, the Union representing White employees, is referred to herein as the "UAW."

4. Appellant is referred to herein as the "State."

Minnesota Pension Act is not only ineffective but is barred by collateral estoppel under principles announced by this Court in *Blonder-Tongue Laboratories, Inc. v. University Foundation*, 402 U.S. 313 (1971), and *Parklane Hosiery Co. v. Shore*, ... U.S. ....., 99 S.Ct. 645 (1979).

2. There is no conflict of decision and the question raised by the State is so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether the Minnesota Pension Act impermissibly impairs the obligation of pension contracts entered into between White and the UAW, the union representing employees of White.

STATEMENT

The record before this Court on this appeal is substantially the same as the record before the Court in *Malone v. White Motor Corp.*, 435 U.S. 497 (1978), where the Court held that the Minnesota Pension Act was not preempted by federal labor law.[5]

In *Malone*, this Court expressly stated in its opinion that White's constitutional claims, including a claim that the Minnesota Pension Act is unconstitutional under the Contract Clause, were not at issue and would be decided

5. Attached hereto in an appendix are the following from the record: (a) portions of the affidavit of H. Herbert Phillips, and (b) the pension guarantees agreed upon in 1968 and 1971 collective bargaining negotiations between White and the UAW, which were attached as exhibits to the Phillips affidavit. References to pages of the appendix are noted as "A ".

by the District Court after remand (435 U.S., at 514-515). Following the decision in *Malone v. White Motor Corp.*, this Court decided the Contract Clause issue in *Allied Structural Steel Co. v. Spannaus*. In that case this Court found that the precise statute involved in this case, the Minnesota Pension Act, constituted an unconstitutional impairment of contract with respect to Allied Structural Steel Co. The District Court and Court of Appeals have applied the *Allied* holding to this case and have found that the Minnesota Pension Act is unconstitutional as applied to White.

The facts of this case are recited in detail in the opinion of this Court in the preemption case, *Malone v. White Motor Corp.*, 435 U.S., at 499-502, and in the opinion of the Court of Appeals for the Eighth Circuit in *White Motor Corp. v. Malone*, 545 F.2d 599 (1976), at 602-603. The State's statement of the case in significant ways is inconsistent with the record facts. These record facts are reviewed briefly below.

White in 1963 purchased two farm equipment manufacturing plants located in Hopkins, Minnesota, and Minneapolis, Minnesota. The employees at these plants were represented by the UAW and were covered by a collectively bargained pension plan originally established in 1950. In collective bargaining agreements subsequent to 1950, the pension plan was amended from time to time to increase substantially the level of scheduled pension benefits. These increases in scheduled pension benefits were applied to years of prior service as well as to years of future service. The inevitable result was to increase the unpaid past service liability, which is the excess of accrued liability over the present value of the assets of a pension fund. This unpaid past service liability was to be met through contributions by the employer from its continuing operations. By the express terms of the pension plan, an amortization period of 35 years was provided for funding the past service liability (A4-A5; 435 U.S., at 500, n.3).

In language unchanged since the 1950 pension plan, the 1971 plan contained the following provisions concerning responsibility for the payment of pensions:

> *Section 6.09.* Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * * * *
>
> *Section 6.17.* No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.
>
> * * * * *
>
> *Section 9.04.* * * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent. (A6; 435 U.S., at 500, n.2).

In collective bargaining negotiations in 1968, and again in 1971, the UAW recognized that the pension plan might soon be terminated and that termination of the plan when the funding schedule had not been completed would result in loss of pensions (A7). For this reason, in 1968 and in 1971 negotiations, the UAW asked that White enter into an agreement providing a guarantee of pensions in the event of termination of the plan (A7). In each of those negotiations White did contract with the UAW to guarantee pensions at designated levels, although lower than

scheduled levels, if there should be a closing of the Minnesota plants and a resulting termination of the pension plan (A7; 435 U.S., at 501). Contrary to the State's assertion (Br. 8),[6] White, by virtue of these guarantees, assumed additional liability for pension payments in the amount of $7,000,000 above the assets of the fund[7] (A5, A7; 435 U.S., at 501). The provisions of the negotiated pension plan limiting White's liability to these guarantees remained in effect (A6; 435 U.S., at 500).

After suffering losses at White Farm in excess of $21,000,000 in the three years from 1969 through 1971, White early in 1972 informed the UAW of its intention to close the Minneapolis (Lake Street) and Hopkins plants (A7; 435 U.S., at 501, n.5). As a result of subsequent negotiations, the Hopkins plant has continued to operate,[8] but operations at the Minneapolis (Lake Street) plant were terminated in June of 1972. Relying on Section 10.2 of the plan, which expressly provided that the employer had the right to terminate the plan at any time, White on June 30, 1972, acted to terminate the plan. Arbitration

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6. References to pages of the State's jurisdictional statement are noted as "Br. ____."

7. The State (Br. 8, n.16) ignores established facts and suggests that the pension guarantees were not part of the negotiations between White and the UAW. The pension guarantee letters state that the guarantees were agreed upon in the contract negotiations between White and the UAW (A11, A13). This fact is confirmed by Herbert Phillips who is in charge of collective bargaining for White (A1, A7). The District Court and the Court of Appeals so found in their decisions in *Malone v. White Motor Corp.*, and this Court in *Malone* concluded:

> "During the 1968 and 1971 negotiations, however, the UAW obtained from appellee [White] guarantees that, upon termination, pensions for those entitled to them would remain at certain designated levels, though lower than those specified in the Plan." 435 U.S., at 501.

8. By later agreement between White and the UAW, a new pension plan is in effect at the Hopkins plant.

followed. The arbitrator ruled that the plan could not be effectively terminated until May 1, 1974, the expiration date of the collective bargaining agreement then in effect (435 U.S., at 501, n.5; 438 U.S., at 248, n.20). Thereafter, White took action again to terminate the plan on May 1, 1974, and the plan terminated on that date.

White continued to pay pensions in full from the pension fund until March, 1976, when the assets of the fund were exhausted. Since March, 1976, White has honored its pension guarantee agreement with the UAW by paying pensions from its own funds at the levels provided by the 1971 pension guarantee.

After the initial attempt by White to terminate the pension plan and just twenty days before the plan's termination on May 1, 1974, the Minnesota Legislature, on April 9, 1974, enacted the Minnesota Pension Act which was signed the next day by the governor in a public ceremony at the site of White's then demolished Minneapolis plant (A8; 438 U.S., at 248, n.20).

Sections 181B.03-.06 of that Act impose a "pension funding charge" directly on employers. Irrespective of contrary terms of the pension plan, those sections provide that, upon termination of a pension plan, any employee with ten years of credited service shall have a right to specified pension benefits computed in accordance with the statute. That right is enforceable directly against the employer rather than against the pension fund to which the employer has contributed. Payment is to be made through the employer's immediate purchase of prepaid deferred annuities sufficient to provide full pensions for all employees who have worked at least ten years.

When the Commissioner of Labor and Industry took steps to enforce the Minnesota Pension Act against White,

this action was filed on May 15, 1975. The amended complaint asserted both a claim that the Minnesota Pension Act was preempted by federal labor law and claims that the Act was unconstitutional under the Contract Clause and other clauses of the United States Constitution. On August 18, 1975, the State notified White that a pension funding charge of $19,150,053 under the Minnesota Pension Act was being assessed against the Company (A8, A10; 435 U.S., at 502). Using the procedure mandated by *Hagans v. Lavine*, 415 U.S. 528 (1974), White sought a preliminary injunction on the ground that the Minnesota Pension Act was preempted by federal labor law. The District Court denied White's motion for an injunction. There followed appeals on the labor law preemption issue eventually decided by this Court in *Malone v. White Motor Corp.*, 435 U.S. 497 (1978).

On June 28, 1978, this Court decided *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). There the Court held that the Minnesota Pension Act was unconstitutional as violative of the Contract Clause of the Constitution. Relying on the Supreme Court decision in *Allied*, White sought and obtained summary judgment in the United States District Court for the District of Minnesota on the ground that the Minnesota Pension Act as applied to White was unconstitutional as violative of the Contract Clause, ... F. Supp. ..... (1978). The judgment of the District Court was affirmed by the United States Court of Appeals for the Eighth Circuit on June 5, 1979, ... F.2d .....

ARGUMENT

1. The Judgment of the Court of Appeals Is Clearly Correct Under the Holding of This Court in Allied Structural Steel Co. v. Spannus, Which Is Controlling Here.

In *Allied*, this Court found that the Minnesota Pension Act severely impaired contractual relationships since the Act "grossly distorted the Company's contractual relationships by superimposing retroactive obligations upon the Company substantially beyond the terms of its employment contracts." (438 U.S., at 249-250). The Court went on to hold that the impairment in *Allied* was unconstitutional as the Minnesota Pension Act did not possess the attributes of those state laws that have survived challenge under the Contract Clause (438 U.S., at 250).

In this case, the contracts under consideration are collective bargaining agreements between White and the UAW, the union representing White employees. The Minnesota Pension Act substantially impairs these contracts and is therefore unconstitutional.

a. The Minnesota Pension Act substantially impairs White's collective bargaining agreements with the UAW

Collective bargaining agreements between White and the UAW dealt directly with the extent of White's liability for the payment of pensions in the event of pension plan termination before pension funding was completed. Those agreements called for a guarantee by White of pensions at an agreed level and provided that, in the event of termination of the pension plan and exhaustion of the pension fund, White's liability would be limited to making the payments called for by the pension guarantee.

Both the Court of Appeals in the preemption case, *White Motor Corp. v. Malone,* 545 F.2d 599, and this Court in its decision on that issue of labor law preemption, 435 U.S. 497, recognized the areas in which the Minnesota Pension Act purported to override the collectively bargained pension plan. This Court described the conflict between the Minnesota Pension Act and the White-UAW pension contracts as follows:

> On appeal, the Court of Appeals for the Eighth Circuit held that the Pension Act was pre-empted by federal labor law, and reversed the District Court. 545 F.2d 599 (1976). The reason was that the Pension Act purported to override the terms of the existing pension plan, arrived at through collective bargaining, in at least three ways: It granted employees vested rights not available under the pension plan; to the extent of any deficiency in the pension fund, it required payment from the general assets of the employer, while the pension plan provided that benefits shall be paid only out of the pension fund; and the Pension Act imposed liability for post-termination payments to the pension fund beyond those specifically guaranteed. 435 U.S., at 503.

The State, under the Minnesota Pension Act, sought to impose on White an obligation to pay immediately $19,-150,053. The following statements by this Court in *Allied* make it clear that the impairment found in *Allied* (where the pension funding charge was $185,000) is present to an even greater degree here:

> Thus, the statute in question here nullifies express terms of the company's contractual obligations and imposes a completely unexpected liability in potentially disabling amounts. There is not even any provision for gradual applicability or grace periods. 438 U.S., at 247.

* * * * *

> Entering a field it had never before sought to regulate, the Minnesota Legislature grossly distorted the company's existing contractual relationships with its employees by superimposing retroactive obligations upon the company substantially beyond the terms of its employment contracts. 438 U.S., at 249-250.

It would be hard to find statements more descriptive of the impairment of White contracts by the application of the Minnesota Pension Act. It is clear that this Court in *Allied* was concerned with the severity of the impairment resulting from the imposition of additional obligations rather than, as the State claims (Br. 10-11), the particular manner in which the additional obligations were imposed.[9]

Not only did the Minnesota Act severely impair the collectively bargained White pension plan, but the imposition of that massive additional liability on White was completely unexpected. In 1968 and 1971 labor contract negotiations with the UAW, White agreed to guarantee pensions at certain designated levels, though lower than those specified in the pension plan. Under the negotiated contracts with the UAW, White's liability for pension payments was limited to following the contractual funding schedule so long as the plan was in effect and honoring the

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9. It should not be overlooked that the Minnesota Pension Act would impose severe liability upon White as a result of the change in vesting requirements. There are 44 former White employees who are not entitled to vested benefits under the negotiated pension plan since they had not attained age 40, but who would receive deferred vested benefits under the Minnesota Pension Act (A9). This is in comparison to the situation in *Allied*, where *nine* former Allied employees were affected by the Act's vesting provisions (438 U.S., at 239).

pension guarantee agreement in the event the plan was terminated. White has honored these commitments. Having expressly bargained to an arm's-length agreement on the extent of its liability for pension payments in the event of pension plan termination, White was entitled to and did rely upon the collectively bargained limitations on liability.[10]

Faced with these facts, the State argues that there is no substantial impairment since some retirees "thought" or "understood" that their pensions were guaranteed beyond the contractual guarantees given by White.[11] These are the very retirees who are the beneficiaries of the pension guarantees negotiated by White with the UAW and currently being paid by White. Not only did the negotiated pension plan expressly limit White's liability, but copies of that pension plan were distributed to White employees who were urged to examine the plan in detail. In the face of these uncontroverted facts, it is difficult to understand how the State can in good faith claim that White has obligations to employees in conflict with its agreements with the UAW. In any event, under established principles of federal labor law, any claim of employee reliance which is contrary to the terms of applicable collective bargaining agreements cannot stand.

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10. The suggestion of the State (Br. 12) that an arm's-length agreement negotiated with an international union representing employees is entitled to less protection under the Contract Clause of the Constitution than a contractual relationship resulting from the unilateral institution of a pension plan is patently unsound.

11. The State in the jurisdictional statement repeatedly claims that White promised to guarantee full pension benefits (Br. 8, 11, 15). In fact, the affidavits of retirees cited by the State allege only that those retirees "thought" or "understood" that their pensions were fully guaranteed. In any event, national labor policy extinguishes the power of a union-represented employee to order his own relationships with his employer concerning bargainable subjects. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967), and see p. 13, *infra*.

This Court has repeatedly recognized that the National Labor Relations Act gives a union "not only wide responsibility but authority to meet that responsibility," *Ford Motor Co. v. Huffman*, 345 U.S. 330, 339 (1953), and that national labor policy "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interest of all employees" and "[t]hus only the union may contract the employee's terms and conditions of employment * * *." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967); *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50, 63 (1975).

If a collective bargaining agreement could be nullified by individual employee beliefs contrary to express terms of the bargained agreement, collective bargaining would become a futile exercise. Employees are bound by agreements entered into by their collective bargaining agent, even if they are unaware of the terms of the agreement. See, *e.g.*, *U. S. Steel Corporation v. Nichols*, 229 F.2d 396, 402 (6th Cir. 1956). The employer does *not* contract with the employees; to the contrary, it contracts with the union, thereby binding the employees.

There is here a severe impairment of contract, unaffected by employee beliefs contrary to the express terms of contracts negotiated with the employees' union.

b. The State's claim that the Minnesota Pension Act serves a public purpose in a reasonable and necessary manner is simply a restatement of arguments made to and rejected by this Court in Allied and, as such, is not only ineffective but is barred by collateral estoppel

The State contends that the Minnesota Pension Act serves a public purpose in a reasonable and necessary

manner (Br. 13-16). The opinion of this Court in *Allied* completely refutes the State's assertion. The tabulation below compares the claims of the State on the purpose and effect of the Minnesota Pension Act with the findings of this Court in *Allied*.

Claims of the State	Findings of This Court
"The public purposes of the Minnesota Pension Act, in particular, have been noted specifically by the Minnesota Supreme Court." (Br. 14).	"The Minnesota Supreme Court, *Fleck v. Spannaus*, ... Minn. ....., 251 N.W.2d 334, engaged in mere speculation as to the state legislature's purpose." (438 U.S., at 248, n.19).
While the Minnesota Pension Act can now be applied only to about 1200 White Motor employees, "at the time of the passage of the Minnesota Pension Act, the Minnesota Legislature had every reason to believe that the Act would protect thousands of Minnesota workers." (Br. 15-16).	The only indication of legislative intent is that the problem of pension plan termination was brought to the attention of the Minnesota legislature when White closed one of its Minnesota plants and attempted to terminate its pension plan. (438 U.S., at 247-248). "Not only did the Act have an extremely narrow aim, but its effective life was extremely short. The United States House of Representatives had passed a version of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (1976 ed.), on February 28, 1974, 120 Cong. Rec. 4781-4782 (1974), and

	the Senate on March 4, 1974, *id.*, at 5011. Both versions expressly pre-empted state laws. That the Minnesota Legislature was aware of the impending federal legislation is reflected in the explicit provision of the Act that it will 'become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.' Minn. Stat. § 181B.17." (438 U.S., at 248, n.21). "Thus, the Minnesota Act was in force less than nine months, from April 10, 1974 until January 1, 1975." (438 U.S., at 249, n.21).
The Act is "a broad enactment regulating a range of subjects in the area of private pensions." (Br. 13).	"[W]hether or not the legislation was aimed largely at a single employer, it clearly has an extremely narrow focus." (438 U.S., at 248).[12]

12. See 438 U.S., at 248, n.20, reciting that after White had been prohibited from terminating its pension plan until May 1, 1974, the Minnesota Pension Act was passed on April 9, 1974 to become effective on April 10, and when White proceeded to terminate its collectively bargained pension plan at the earliest possible date, May 1, 1974, the State assessed a deficiency of more than $19 million. In addition, the Minnesota Pension Act was signed by the governor in a public ceremony at the site of White's demolished Minneapolis plant (A8).

The Act "falls within the broad scope of the police power of the State of Minnesota." (Br. 14).

"[T]his law can hardly be characterized . . . as one enacted to protect a broad societal interest rather than a narrow class (438 U.S., at 248-249). * * * The law was not even purportedly enacted to deal with a broad, generalized economic or social problem." (438 U.S., at 250).

The Act operates in a "necessary" and "reasonable manner." (Br. 13-16).

The Act "invaded an area never before subject to regulation by the State" (438 U.S., at 250) and "did not effect simply a temporary alteration of the contractual relationships of those within its coverage, but worked a severe, permanent, and immediate change in those relationships - irrevocably and retroactively." (438 U.S., at 250). "There is not even any provision for gradual applicability or grace periods." (438 U.S., at 247). "Compare the gradual applicability of ERISA, which itself is not even mandatory. At the outset ERISA did not go into effect at all until four months after it was enacted. 29 U.S.C. § 1144 (1976 ed.). Funding and vesting requirements were delayed

for an additional year. §§ 1086 (b), 1061 (b) (2) (1976 ed.). By contrast, the Minnesota Act became fully effective the day after its passage. The District Court rejected out of hand the argument that employers were constitutionally entitled to some grace period to adjust their pension planning. 449 F.Supp., at 651." (438 U.S., at 249, n.23).

The arguments of the State concerning the purpose, necessity and impact of the Minnesota Pension Act are precisely the arguments made by it to this Court in *Allied*.[13] The findings and conclusions of this Court in rejecting the State's arguments leave no room for a suggestion that the defects of the Minnesota Pension Act relate only to the Act's impact on Allied Steel. The Act's lack of public purpose, its narrow focus and its failure to meet the standards of necessity and reasonableness are basic defects providing a defense to any attempt by the State to use the Act to change materially the obligations of a valid contract. The holding of this Court in *Allied* is clearly applicable here.

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13. The arguments concerning the public purpose of the statute, including arguments that the statute was a broad law and a major police power enactment serving the general welfare of the State, are found at pages 12-14 of the State's Motion to Dismiss or Affirm before this Court in *Allied*, at pages 7-8 and 12-14 of its Brief to this Court in *Allied*, and at pages 2-4 of its Petition for Rehearing, also addressed to this Court. The argument that the statute is necessary and reasonable is found at pages 14-19 of the State's Motion to Dismiss or Affirm and at pages 7-8 and 15-25 of its Brief to this Court in *Allied*.

In addition to the fact that *Allied* is as direct a precedent as can be imagined, the State through its officials was the defendant in *Allied* and is the defendant here. The doctrine of collateral estoppel precludes the State from relitigating here any issues decided adversely to the State in *Allied*.[14] Collateral estoppel is now applicable in federal courts in federal-question cases and may be used either offensively or defensively where the party against whom the doctrine is asserted had a full and fair opportunity to be heard on that issue in the prior litigation. *Parklane Hosiery Co. v. Shore,* ..... U.S. ....., 99 S. Ct. 645 (1979).

In affirming the decision of the Second Circuit in *Parklane,* this Court held that it was no longer "tenable to afford a litigant more than one full and fair opportunity for judicial resolution of the same issue," 99 S. Ct., at 650-652, a holding the Court had predicted in *Blonder-Tongue*

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14. In many respects, the *Allied* case and the *White* case have been companion cases. Both cases were commenced in 1975. The initial decisions of the District Court in the two cases were rendered on the same day, March 19, 1976. *Fleck v. Spannaus,* 412 F. Supp. 366 (D. Minn. 1976); *White Motor Corp. v. Malone,* 412 F. Supp. 372 (D. Minn. 1976). The two cases took different paths, primarily because of the labor law preemption issue which was present in *White,* but not in *Allied.* But the parties were fully aware of the fact that the Contract Clause issue was present in both cases. Because of the presence of this common issue, counsel for White filed an *amicus* brief and argued orally before the Three-Judge Court considering the *Fleck* case. See *Fleck v. Spannaus,* 449 F. Supp., at 645. Both the District Court and the Three-Judge Court made express references to the *White* case in their opinions. 412 F. Supp., at 368; 449 F. Supp., at 651. This Court was fully familiar with the facts of this case when it decided *Allied,* and this Court's opinion in *Allied* contains three separate references to the *White* case. 438 U.S., at 236, n.1; 239, n.8; 248, n.20. Although the *White* case was proceeding through the courts on a different issue, it was fully understood that the case would be back in the District Court on the Contract Clause issue if the labor law preemption issue were not dispositive. Thus, in the words of the Second Circuit, the *White* case was "known by everyone to be lurking in the wings," while the *Allied* case was being litigated. *Zdanok v. Glidden Co.,* 327 F.2d 944, 956 (2nd Cir. 1964).

Laboratories, Inc. v. University Foundation, 402 U.S. 313 (1971), at 328-329. In *Parklane,* this Court applied collateral estoppel offensively despite the fact that such application deprived the defendant of the right to a jury trial on the issue of liability. Here, White's assertion of collateral estoppel is defensive in that White is opposing the attempted enforcement by the State of the Minnesota Pension Act. The purpose, necessity and reasonableness of the Minnesota Pension Act are issues that the State may not relitigate in this appeal.

2. There Is No Conflict of Decision and the Question Raised by the State Is So Unsubstantial As Not to Need Further Argument.

The State has not cited and cannot cite any authority contrary to the decisions of the Court cited in support of this motion. The precise question here raised by the State has been answered in the holding of this Court in *Allied.* There is no reason for further argument.

CONCLUSION

For the reasons stated herein, Appellees respectfully request the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

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September 18, 1979

APPENDIX

PORTIONS OF AFFIDAVIT OF H. HERBERT PHILLIPS

State of Ohio
Cuyahoga County—ss.

H. HERBERT PHILLIPS, being first duly sworn, makes this Affidavit in support of Plaintiffs' Motion for Summary Judgment or in the alternative, for a Preliminary Injunction, and for this purpose deposes and says as follows:

1. He resides in Gates Mills, Ohio, which is a suburb of Cleveland, Ohio. He is and has been since August of 1971 Vice President, Personnel and Industrial Relations, of White Motor Corporation (White Motor) and in that capacity he has been and is in charge of collective bargaining with various unions representing employees in plants of White Motor and its subsidiaries throughout the country.

2. White Motor is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Cleveland in the State of Ohio. White Motor is and at all times referred to herein was engaged in the manufacture and sale, in interstate commerce, of trucks and motor truck parts. White Motor in 1974 had gross sales of approximately $1,390,000,000 and approximately 17,800 full time employees. * * *

3. White Farm Equipment Company (White Farm) is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

4. White Farm has a plant located at Hopkins, Minnesota which for the year 1974 had gross sales in excess of $38,000,000 and approximately 285 employees. Until approximately June 1972 White Farm also operated a second plant in Minnesota on Lake Street, Minneapolis. In operating the Hopkins facility White Farm regularly obtains and receives equipment, tools and supplies from various states of the United States outside Minnesota which are shipped across state lines to Hopkins facility; and White Farm regularly uses the interstate mails, other interstate communication systems and interstate transportation systems in operating the Hopkins facility.

5. In 1962 White Motor organized a subsidiary, Minneapolis-Moline, Inc., which on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called The Minneapolis-Moline Company) which had operated the plants in Minneapolis and Hopkins prior to January 1, 1963. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm Equipment Company and operated these Motec plants and other plants.

6. Since July 6, 1955, the production, maintenance and clerical employees at the Minneapolis and Hopkins plants have been represented, for purposes of collective bargaining, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW"). From September 7, 1950 to 1955 such production, maintenance and clerical employees had been represented, for purposes of collective bargaining, by the United Electrical, Radio and Machine Workers of America.

7. After White Motor acquired Minneapolis-Moline in January 1963, pension benefits as a result of negotiations

with the UAW rose at the following rates and average annual pensions increased as follows:

Year	Basic Benefit Rate and Maximum Years of Credited Service	Average Annual Pension Benefit
1963	$2.50 x years of service (Maximum 25 years)	$ 819
1964	$2.80 x years of service (Maximum 25 years)	819
1965	$2.89 x years of service (Maximum 25 years)	820
1966	$4.25 x years of service (Maximum 25 years)	1,437
1967	$4.25 x years of service (Maximum 30 years)	1,441
1968	$5.25 x years of service (Maximum 30 years)	1,816
1969	$5.25 x years of service (Maximum 30 years plus Supplemental Allowance)	1,868*
1970	$5.50, $5.75 and $6.00 x years of service (Maximum 33 years plus Supplemental Allowance)	2,100*
1971	Same as 1970	2,107*
1972	$6.50, $6.75 and $7.00 x years of service (Maximum 34 years plus Supplemental Allowance)	2,478

*Excluding Supplemental Allowances

8. Prior to 1968, there had been no provision in the pension plan negotiated with the UAW for these two Minnesota plants which required funding of unpaid past service liability under the plan. In 1968, through contract negotiations with the UAW, the following section was added to the pension plan covering the Minnesota plants:

> "The unfunded net deficiency as of January 1, 1963, will be amortized over a thirty (30) year period from January 1, 1963. The deficiencies resulting from benefit increases effective May 1, 1966 and May 1, 1967, will be funded uniformly over a thirty-year period from May 1, 1966 and May 1, 1967 respectively. The deficiencies resulting from benefit increases as negotiated to become effective May 1, 1968 and thereafter will be funded uniformly over a thirty (30) year period commencing with the effective date of each such benefit."

9. In the 1971-72 negotiations, culminating in the amended Pension Agreement and Plan executed in January 1972, (sometimes hereinafter called the "Plan") the Union demanded an increased level of pension benefits, and, in return for the Company's agreement to increase benefits, agreed to substitute 35-year funding of past service liability for the 30-year funding requirement contained in the 1968 Pension Plan. Deferred funding of past service liability is a common feature of pension plans. At the time the White-UAW contracts were negotiated, the thirty and thirty-five year amortization periods were consistent with industry practice. This kind of trading to obtain a quid pro quo for a new commitment is common in collective bargaining. The provision concerning funding in the amended Plan, effective as of January 1, 1971, reads as follows:

> "The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively."

10. When White Motor acquired Minneapolis-Moline in 1963, the Pension Fund for the Plan had assets of less than $500,000 and an unfunded past service liability of approximately $6,000,000. Since that time, the Company has made regular contributions to the Fund covering normal cost and amortization of past service liability. For example, contributions in 1963 totaled $528,000 and in 1971 totaled $1,225,269. The total contributions made by the Company to the Pension Fund under the Plan in the period from January 1, 1963 to September 1, 1975, were in excess of $10,200,000. From May 1, 1974 to September 1, 1975, Company contributions to the Pension Fund exceeded $2,000,000. During the period from January 1, 1963 to September 1, 1975 the total amounts of pension benefits disbursed from the Pension Fund were approximately $11,300,000. Of that amount, more than $2,300,000 in pension benefits have been paid to retirees since May 1, 1974.

11. In early 1972 the Minneapolis-Moline Division of White Farm and the UAW executed collective bargaining agreements covering production and maintenance and clerical employees at the Minneapolis and Hopkins plants for the period from May 1, 1971 to May 1, 1974. * * * Exhibit C to each such agreement incorporated a Pension Agreement and Plan (the Plan) originally agreed to in collective bargaining agreements entered into in 1950 and amended in subsequent labor negotiations, by the following language:

"The parties hereto have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this agreement the same as if set forth at length herein."

12. [Omitted]

13. In language unchanged since 1950, the Plan (as amended in the 1971-72 collective bargaining negotiations with the UAW) provided for payment of pensions as follows:

"Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * * *

"Section 6.17—No Other Benefits

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * * *

"Section 9.04—Rights of Employees in Fund

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent."

14. The UAW recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the Pension Fund and that termination of the Plan when the projected funding was short of accomplishment would result in loss of pensions. By reason of its awareness of this problem, the UAW insisted on and obtained, in the 1968 collective bargaining negotiations and again in the 1971 negotiations, agreements of White Motor to guarantee, "in the event there should be a closing of the Minneapolis-Moline plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan," payment of pensions at a designated level if the pension fund was insufficient to pay in full the pensions called for by the Pension Plan. The additional obligation of the Company by virtue of the Pension Guarantee is estimated at $7,000,000. Copies of these 1968 and 1971 pension guarantees are attached hereto as Exhibits 4A and 4B.

15. During the three-year period of 1969, 1970 and 1971, the Minneapolis-Moline Division incurred losses in excess of $21,000,000. Early in January 1972, before the collective bargaining agreement effective as of May 1, 1971 was executed by the parties, the Company advised the UAW that it intended to close the Minneapolis and Hopkins plants. Thereafter, the Company and the UAW conducted negotiations on the possibility of continued operations at one or both of these plants. As a result of those negotiations, while the feasibility of long term operation of the Hopkins plant was not established, operations at that plant have continued. Operations at the Minneapolis plant were terminated in June 1972 and the plant was closed and the building housing it demolished.

16. Section 10.02 of the Plan provided that "[t]he Company shall have the sole right at any time to terminate

the entire Plan." Relying on this provision, the Company on June 30, 1972 terminated the Plan. The UAW filed grievances challenging the Company's right to terminate the Plan prior to expiration of the collective bargaining agreements on May 1, 1974 and this question was subsequently submitted to arbitration. On or about August 30, 1973, an arbitration award was entered ruling that the Plan could not be effectively terminated prior to May 1, 1974. That award was thereafter confirmed in litigation testing the award and the Company has complied with the award. By reason of such arbitration award, the Company took action again to terminate the Plan on May 1, 1974, and the Plan terminated on May 1, 1974.

17. [Omitted]

18. The Minnesota Pension Act became effective on April 10, 1974 after the governor of Minnesota signed the act at the site of the then demolished Lake Street plant of the Company. That Act purports to impose upon Plaintiffs liabilities and charges in respect of pension benefits which are in direct conflict with the express agreements which Plaintiffs have reached through the collective bargaining process with the union representing White Farm employees in the Minnesota plants. Thus:

(a) The Minnesota Pension Act, in conflict with the express provisions of the Pension Plan, the March 3, 1972 pension guarantee negotiated with the UAW (Exhibit 4B hereto) and the Lake Street closing agreement of December 22, 1972, imposes on Plaintiffs a charge for full funding of all employee pensions upon termination of a Pension plan. On August 18, 1975 the Minnesota Department of Labor and Industry, in an attempt to enforce this pension funding charge, mailed to White Motor and White Farm notice of an assessment under the Minnesota Pension Act in the amount of $19,150,053. While the accuracy of the

computations of the Department of Labor and Industry is in dispute, if the Act is applied to Plaintiffs there will be imposed on Plaintiffs a liability of many millions of dollars in excess of the limits of Plaintiffs' liability under the agreements negotiated with the UAW.

(b) As of January 1, 1975 there were 981 retirees under the Plan and 260 active employees at the Hopkins plant who were participants in the Plan. In addition, there were, as of that date, 233 persons with vested rights to a deferred pension under the terms of the Plan by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In direct conflict with the provisions of the Plan, the Minnesota Pension Act purports to grant vested rights to employees who at the time of the termination of their employment had 10 years of service but had not attained age 40. The effect of this provision of the Minnesota Pension Act would be to grant deferred vested pensions to 44 terminated employees of White Farm who at the time of the termination of their employment had 10 years of service but had not attained age 40 and who therefore do not qualify for deferred vested pensions under the Plan negotiated by the Company and the UAW.

(c) [Omitted]

(d) [Omitted]

19. [Omitted]

20. [Omitted]

21. [Omitted]

Further, affiant sayeth not.

H. HERBERT PHILLIPS

EXHIBITS 4A AND 4B TO AFFIDAVIT OF H. HERBERT PHILLIPS—PENSION GUARANTEE LETTERS

MINNEAPOLIS-MOLINE, INC.,
Hopkins, Minnesota 55343

September 26, 1968

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During our recent contract negotiations the Union proposed and the Company agreed to guarantee retirement benefits under the Retirement Income Plan in the event there should be a closing of the Minneapolis-Moline Plants and resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after distribution of the Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1965, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.

3. The guarantee shall apply only to those employees who have ten or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments became due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement and for a period of one year thereafter, or until renewal of the Pension Agreement, whichever date occurs first.
6. This guarantee shall be automatically cancelled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

W. J. HUNT
Vice President & Treasurer

WJH/mf

MINNEAPOLIS-MOLINE
Division of White Motor Corporation
Hopkins, Minnesota 55343

March 3, 1972

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after the disposition of Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1968, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc., prior to acquisition by White Motor Corporation. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten (10) or more years of credited service at the date of termination of the Plan.

4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement or until renewal of the Pension Agreement, whichever date occurs first.
6. The guarantee shall be automatically canceled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

DONALD B. WYZLIC
Personnel Manager